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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWIN MEDINA,

Defendant and Appellant.

2d Crim. No. B206123
(Super. Ct. No. VA102965)
(Los Angeles County)

Edwin Medina contends the trial court's finding that he has a prior strike within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(i); 1170.2, subds. (a)-(d))¹ is not supported by the record. We affirm.

FACTS

On October 17, 2007, at 11:58 p.m., Medina was driving a 1985 GMC Safari. The police stopped him because he did not have the lights on. Medina did not have a license, registration or proof of insurance. The police discovered the Safari belonged to a woman who lived in the neighborhood. Medina did not have the owner's consent to take the vehicle.

The Los Angeles County District Attorney charged Medina with the unlawful driving or taking of a vehicle in count 1 (Veh. Code, § 10851, subd. (a)) and

¹ All statutory references are to the Penal Code unless otherwise stated.

receiving stolen property, a motor vehicle, in count 2 (§ 496d, subd. (a)). The prosecutor also alleged Medina had a prior strike within the meaning of the three strikes law.

Medina pled not guilty and moved to dismiss the prior strike allegation on the ground that the record does not contain sufficient evidence to support the allegation. Medina argued his prior conviction for negligent discharge of a firearm (§ 246.3) does not qualify as a prior strike unless he personally used the firearm. He claimed the record of his conviction contains no evidence of personal use. The trial court denied the motion to dismiss the prior strike allegation.

Thereafter, pursuant to a plea bargain, Medina pled no contest to counts 1 and 2. The trial court found the prior strike allegation to be true. The trial court sentenced Medina to the low term of two years on count 1, doubled to four years based on the prior strike. The court stayed the same sentence on count 2 under section 654.

DISCUSSION

Medina contends the trial court's finding that he has a prior strike is not supported by the record of the conviction.

The three strikes law provides longer sentences for felons who were previously convicted of an offense defined as a violent felony in section 667.5, subdivision (c), or as a serious felony defined in section 1192.7, subdivision (c). For a single such prior "strike," the sentence for the current felony conviction is doubled. (§ 667, subds. (d)(1) & (e)(1).)

The prosecution has the burden of proving beyond a reasonable doubt that a prior felony conviction qualifies as a strike. (*People v. Towers* (2007) 150 Cal.App.4th 1273, 1277.) In determining whether a prior conviction qualifies as a strike, the trier of fact may look to the entire record of conviction, but no further. (See *People v. Guerrero* (1988) 44 Cal.3d 343, 355; see *People v. Reed* (1996) 13 Cal.4th 217, 223.)

A violation of section 246.3, is not an enumerated serious or violent felony under section 1192.7, subdivision (c), or section 667.5, subdivision (c). The only basis for finding a violation of section 246.3 to be a strike is under section 1192.7, subdivision (c)(8). That subdivision provides: "[A]ny felony in which the defendant personally . . .

uses a firearm" is a serious felony. (*Ibid.*) Thus the record of Medina's prior conviction must contain substantial evidence of personal use of a firearm. (*People v. Bautista* (2005) 125 Cal.App.4th 464, 654-655.)

In reviewing the record of Medina's prior conviction, the trial court stated:

"In this particular case, the case was disposed of - - or disposition was reached before the preliminary hearing. There is no preliminary hearing transcript. The defendant was advised at the time of his original plea that the case was a strike. . . .

"In and of itself, I would agree with [defense counsel], there is a possibility that maybe they didn't quite understand what the code section means. Just because he admitted at the time of the original plea it was a strike, I wouldn't say that's definitively proof that he, in fact, believed that it was a strike conviction, that it was, in fact, a strike conviction. . . .

"If left at that and that was the entire record of conviction, then I think that I would be inclined to grant the defense motion to dismiss or strike the prior because there is, in fact, a lack of authority or admissions with the sole admission of the first advisement. . . .

"But in this particular case, what I'm going to do is use his entire record of conviction, which indicates Mr. [Medina] on a subsequent date was, in fact, convicted on another case - - that is VA088521 - - and at the same time he was sentenced to a concurrent sentence. His term was doubled, and that is, in fact, from the July 15th, 2005, guilty plea. Sentence in that case was state prison. . . .

"The People have pointed out on a subsequent occasion Mr. [Medina] was once again re-advised that it was a prior strike, and once again it was re-advised that it was treated as a strike within the meaning of [section] 1170.12, and specifically the court doubled his sentence at that time."

Medina argues the trial court erred in going outside the record of his original conviction to consider admissions made in two subsequent cases. The Attorney General concedes that the court was not permitted to consider Medina's subsequent convictions in determining whether his prior conviction was a strike.

Instead, the Attorney General relies on Medina's plea of guilty to a violation of section 246.3 after the trial court advised him that it constituted a strike. The Attorney General cites *People v. Leslie* (1996) 47 Cal.App.4th 198, 205. There, at the time of his no contest plea on the current offense, Leslie admitted he personally used a firearm in committing a prior offense. The court said the trial court properly found the prior offense was a serious felony.

Medina seeks to distinguish *Leslie* on the ground that here he did not admit his prior conviction constitutes a strike when he pled no contest in his current conviction.

We agree with the Attorney General. Medina's plea of guilty to a violation of section 246.3 after being advised that it was a strike, constituted an admission that it was a strike. The record reveals no protest to the trial court's admonishment that the offense constituted a strike.

Medina argues that just because the trial court says it is a strike, does not make it so. The trial court could have been wrong. But it is pure conjecture to say the trial court was wrong. In the absence of something compelling in the record to indicate the trial court was wrong about the conviction being a strike, the trier of fact can take the trial court's admonition at face value.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Roger Ito, Judge
Superior Court County of Los Angeles

Alan Stern, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.